actions of this sort the presumption does not exist. *Sanger* v. *Waterbury*, 116 N. Y. 371. It is to be regretted that such a desirable result has not been reached more frequently. But the general law is undoubtedly that even when the only thing that remains to be done is to ascertain the price the presumption is that title has not passed. *Devane* v. *Fennell*. 2 Ired. (N. C.) 36. It is submitted, however, that even slight evidence of a contrary intent, such as part payment of the price, should be sufficient to overthrow the presumption. *Cf. Byles* v. *Colier*, 54 Mich. 1.

HAS A TRUSTEE A DUAL PERSONALITY? — The proposition that a judgment against a person sued as an individual does not work an estoppel in a second action in which he appears in order to litigate rights which he has as a representative, is laid down by several text-writers. 2 BLACK, JUDG. § 536; 1 FREEMAN, JUDG. § 156. The reason assigned is that every representative has in legal contemplation a representative personality, distinct from his individual personality. See WELLS, RES ADJUDICATA § 21. By an application of this doctrine, a recent Kansas case holds that judgment in a foreclosure suit against a person individually does not bar him from subsequently setting up a claim to the property as trustee. *Farmers', etc., Co.* v. *Essex*, 71 Pac. Rep. 268.

It is undoubtedly true that some classes of representatives have received in their representative capacity a legal recognition which justifies in their case the application of the doctrine under discussion. An executor, for example, is treated in his official capacity as continuing the personality of his testator. The goods of the estate were not forfeited for the executor's treason; nor could they be taken in execution on a judgment against him as an individual; and personal disability did not prevent him from maintaining an action as executor. 1 HALE P. C. 251; WENTW. OFF. EX. 14th ed. 36; *McCleod* v. *Drummond*, 17 Ves. 152, 169. It is accordingly almost universally held that matters concluded in an action to which an executor, as such, was a party, are not *res judicata* in an action in which he appears as an individual. *Carey* v. *Roosevelt*, 102 Fed. Rep. 569. There has been, however, no such recognition of the official personality of the trustee. Trust property was liable to forfeiture for his crime, and his title in the trust *res* could be taken in execution by his creditors. *Stith* v. *Lookabill*, 71 N. C. 25; see *Pawlett* v. *Atty. General*, Hard. 466.

It might be argued, however, that although the trustee in his representative capacity has not been accorded legal recognition for other purposes, he should receive it for purposes of judgment. Although the doctrine of the text-writers already noted appears to sustain this view, an examination of the cases cited in support of it will show that a large proportion of them are not in point, since they were decided on the ground that the issue in question in the second suit was not involved in the first. See *McNutt* v. *Trogden*, 29 W. Va. 469. Practically all the remaining cases concern executors or other representatives whose separate official existence has been recognized by the law. Furthermore, an examination of the cases concerning trustees shows the weight of authority to be against the partial recognition suggested. Thus a recent Kentucky case holds that although the defendant was summoned as trustee, she was present in her individual capacity. *Commonwealth* v. *Hamilton*, 72 S. W. Rep. 744. This accords with the doctrine of other jurisdictions. *Shephard* v. *Creamer*, 160 Mass. 496.

On principle, the doctrine of the Kansas case that a judgment against a party described as trustee binds him in his representative capacity only, involves the inconsistency that while both his individual and his representative rights are held by him as one person, in order to enforce those rights he must become two persons. The doctrine is objectionable, moreover, on grounds of convenience, since it introduces new difficulties into the already complicated doctrine of *res judicata*, and tends to unsettle other departments of the law of trusts.

DAMAGES IN TROVER FOR SEVERANCE FROM REALTY. — A recent Alabama decision raises the unsettled question as to the measure of damages in trover for the conversion of coal severed from the realty by an innocent trespasser. *Ivy Coal & Coke Co.* v. *Alabama Coal & Coke Co.*, 33 So. Rep. 547. The case holds that the plaintiff may recover as damages the value of the coal immediately after severance. This rule was originally enunciated in England in *Martin* v. *Porter*, 5 M. & W. 351. A later decision, however, held that if the wrongdoer acted in good faith, the plaintiff might recover only the value of the coal in place. *Wood* v. *Morewood*, 3 Q. B. 440 n. This represents the existing rule in England. *Livingstone* v. *Rawyards Coal Co.*, 5 App. Cas. 25. The decisions in the United States, while they follow the English rule as to the measure of damages for a wilful taking, are in conflict as to an innocent taking. *Forsyth* v. *Wells*, 41 Pa. St. 291; *McLean County Coal Co.* v. *Lennon*, 91 Ill. 561. The same question has arisen with regard to trees and has resulted in the same difference of opinion. *Ayres* v. *Hubbard*, 71 Mich. 594; *White* v. *Yawkey*, 108 Ala. 270.

It is well recognized that the basic principle underlying the theory of damages in the common law is compensation for loss suffered. Any departure from that principle should have a clearly defined reason to support it. *Allison* v. *Chandler*, 11 Mich. 542. It is true that the general rule of damages in trover is the value of the chattel at the time of conversion. See SEDG. DAM. 8th ed. § 493. It would seem, however, that this general rule has its foundation in the fact that in the large majority of cases it will approximately determine the actual loss suffered. Accordingly, in a number of instances where the rule would not fulfil that purpose, a different measure of damages has been applied. Thus where a party wrongfully attached another's property, and subsequently attached it rightfully, it was held that the damages in an action of trover would be reduced in so far as the chattel had been applied under the second attachment in satisfaction of the plaintiff's debt. *Curtis* v. *Ward*, 20 Conn. 204. Similarly, it is well settled that where property is converted and subsequently returned and accepted by the owner, the damages will be reduced to the actual loss suffered. *Greenfield Bank* v. *Leavitt*, 34 Mass. 1.

The argument of the principal case is that when the coal is separated it is the plaintiff's chattel, and consequently, applying the general rule, it follows that for depriving him of that chattel, the damages must be the value of the coal immediately after severance. But since the damages recovered included the value of the labor expended by the defendant in mining the coal, they were obviously more than the actual loss suffered. On the principle of the cases cited above, therefore, there would seem to be a sufficient reason for departing from the general rule. The fact that in those cases